

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

SAMMY JOLLY, Complainant,

VS.

VENETIAN IRON WORKS, INC., Respondent.

CP# 04-83-10478

THIS MATTER, a complaint filed by Sammy Jolly (Complainant) with the Iowa Civil Rights Commission (Commission) charging VENETIAN IRON WORKS, INC. (Respondent) with discrimination in employment on the basis of race came on for Hearing in Des Moines, Iowa on May 25, 1988, before Ione G. Shaddock serving as Hearing Officer. The case in support of the complaint was presented by Rick Autry, Assistant Attorney General. Neither the Respondent nor an attorney for Respondent appeared. Attorney Autry submitted a letter dated May 13, 1988, from Kenneth G. Butters, Attorney for Respondent, stating that neither he nor any representatives of Venetian Iron works, Inc., would be attending the Hearing. (Complainant's Exhibit 2). Attorney Autry understood that Respondent intends to dissolve the corporation. On that basis Attorney Autry moved for a default judgment against Respondent.

Under Iowa R. Civ. P. 23 (c) Venetian Iron Works, Inc., was declared in default for failure to appear for Hearing.

The Hearing Officer requested to hear and receive evidence upon which judgment could be based pursuant to Iowa R. Civ. P. 232(b).

FINDINGS OF FACT

1. The Complainant, Sammy Jolly, timely filed verified complaint CP# 04-83-10478 with the Commission on April 14, 1983, alleging a violation of Iowa Code section 601A-6, discrimination in employment on the basis of race by Venetian Iron Works, Inc.
2. The complaint was investigated, probable cause found conciliation attempted but failed. Notice of Hearing was issued on December 31, 1987.
3. In February of 1983, Jolly was unemployed. He registered with Job Service of Iowa. Job Service referred him to Respondent. He applied for the job and took a welding test which he passed. He then interviewed and was told he would start on the 23rd. The night before he was to start, he was called not to report to work because they were having problems with the machines. When he reported back to Job Service they had a report from Respondent that he had failed to report to work and when he went to talk with Respondent, they told him the same thing and would not talk with him about it. He then filed this complaint.
4. The record indicates, but is not clear whether or not Respondent offered Jolly a job 3 or 4 months after he filed the complaint. It is noted that the burden of proving failure to mitigate

damages is on the Respondent. Had he worked for Respondent, he would have earned \$5.75 per hour with a raise to \$6.00 per hour after 60 days probation.

If he had been hired by Respondent, Jolly would have received \$10,480.00 (\$230 for 8 wks.; \$240 for 36 wks. from March 1 through December 31, 1983). He earned \$2636.36 (Younkers), \$1581.00 (Polk County) and received \$1208.00 (unemployment). The difference is \$5,052.64. In 1984, Jolly received \$60.00 (unemployment) and \$7,854.76 (Polk County). His would have earnings were \$12,480 (\$240 x 52 weeks). The difference is \$4565.24. Beginning in 1985, Jolly was earning more than he would have earned had he been hired by Respondent. Back pay award, therefore, ceases as of 12-31-84.

RECOMMENDED DECISION AND ORDER

1. Venetian Iron Works, Inc. is declared in default and judgment is rendered against them.
2. IT IS ORDERED that Venetian Iron Works, Inc. shall pay Sammy Jolly back pay in the amount of \$9,617.88, (\$5052.64 + \$4565.24) plus interest at 10% per annum from April 14, 1983, until paid in full.

Signed this 27th day of July 1988.

IONE G. SHADDUCK,

Admin. Law Judge

FINAL ORDER

ON August 26, 1988, the Iowa Civil Rights Commission, at its regular meeting, adopted the Administrative Law Judge's proposed decision. The Commission order is as follows:

DECISION AND ORDER

1. Venetian Iron Works, Inc., is declared in default and judgment is rendered against them.
2. IT IS ORDERED that Venetian Iron Works, Inc. shall pay Sammy Jolly back pay in the amount of \$9,617.88 (\$5,052.64 + \$4,565.24) plus interest at 10% per. annum from April 14, 1983, until paid in full.

Signed this 27th day of July, 1988.

RUBY ABEBE, CHAIRPERSON